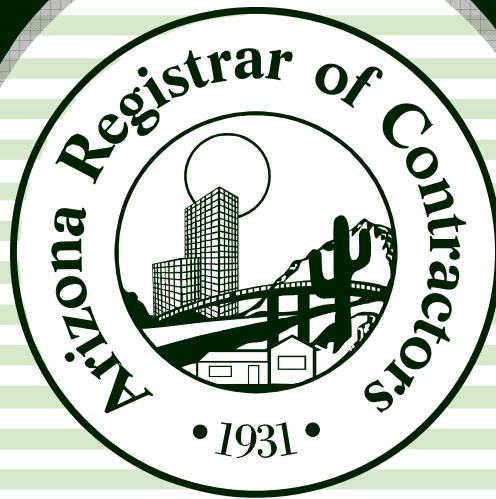


# STATUTES

September 2008



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**The mission of the Registrar of Contractors is to promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety, and welfare of the public.**

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**This booklet is printed for the convenience of consumers, contractors and others needing information regarding Arizona licensing requirements. Every effort has been made to reproduce the statutes and rules as they appear in the official publications of the State of Arizona. The reader also may refer to the Arizona Revised Statutes, as amended and the Arizona Administrative Code printed by the Secretary of State.**

*This publication includes certain changes that are effective September 27, 2008. In addition, new revisions are shown in bold text throughout this booklet.*

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## **ARIZONA REVISED STATUTES**

### **ARTICLE 1. REGISTRAR OF CONTRACTORS**

#### **§32-1101. Definitions**

A. In this chapter, unless the context otherwise requires:

1. "Advertisement" means any written or oral publication, dissemination, solicitation or circulation which is intended to directly or indirectly induce any person to enter into an agreement for contracting services with a contractor including business cards and telephone directory display advertisements.

2. "Commercial contractor" is synonymous with the terms "commercial builder", "industrial builder" and "public works builder" and means any person, firm, partnership, corporation, association or other organization, or any combination, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others, except within residential property lines, to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

3. "Contractor" is synonymous with the term "builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid or responds to a request for qualification or a request for proposals for construction services to, does himself or by or through others, or directly or indirectly supervises others to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

4. "Dual licensed contractor" is synonymous with the term "commercial and residential builder" and means any person, firm, partnership, corporation, association or other organization, or any combination, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others under a single license on commercial or residential property to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, excavation or other structure or improvement, including any appurtenances, or to do any part thereof.

(b) Connect such structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

5. "Person" means an applicant, an individual, a member of a limited liability company, a qualifying party, any partner of a partnership or limited liability partnership or any officer, director, qualifying party, trustee of a trust, beneficiary of a trust or owner of at least twenty-five per cent of the stock or beneficial interest of a corporation.

6. "Registrar" means the registrar of contractors.

7. "Residential contractor" is synonymous with the term "residential builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, or does himself or by or through others, within residential property lines:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any residential structure, such as houses, townhouses, condominiums or cooperative units. Residential structures also include apartment complexes of four units or less and any appurtenances on or within residential property lines.

(b) Connect such residential structure to utility service lines, metering devices or sewer lines.

(c) Provide mechanical or structural service for any such residential structure.

B. "Contractor" includes subcontractors, specialty contractors, floor covering contractors, landscape contractors, other than gardeners, and consultants representing themselves as having the ability to supervise or manage a construction project for the benefit of the property owner including the hiring and firing of specialty contractors, the scheduling of work on the project and the selection and purchasing of construction material.

C. For the purposes of this chapter "residential contractor" does not include an owner making improvements pursuant to section 32-1121, subsection A, paragraph 5.

D. Only contractors as defined in this section are licensed and regulated by this chapter.

### **§32-1101.01. Local authority**

The legislature determines that the licensing of construction contractors is a proper state function. Cities, including charter cities, towns and counties shall not require licenses of any construction contractors licensed by statute prior to the effective date of this section.

### **§32-1102. Classification of licenses; contracting business**

For the purpose of license classification, the contracting business shall include:

1. General commercial building contracting, which is engaging in the contracting business in connection with any structure built, being built or to be built on commercial property for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, or superintending the whole or any part thereof, and which includes the management or direct or indirect supervision of any work performed by a contractor but does not include a person who merely furnishes materials or supplies as provided in section 32-1121 without fabricating them into or consuming them in performing the work of the general contractor.

2. General dual licensed contracting, which is engaging in the contracting business in connection with any structure built, being built or to be built on residential or commercial property for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, or superintending the whole or any part thereof, and which includes the management or direct or indirect supervision of any work performed by a contractor but does not include a person who merely furnishes materials or supplies as provided in section 32-1121 without fabricating them into or consuming them in performing the work of the general contractor.



3. General engineering contracting, which is engaging in the contracting business other than residential contracting in connection with fixed works requiring specialized engineering knowledge and skills and includes irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airport runways, sewerage, bridges, earth moving projects, paving and transmission lines.

4. General residential contracting, which is engaging in the contracting business by any general contractor or subcontractor who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any residential structure or appurtenances including swimming pools on or within residential property lines.

5. Specialty commercial contracting, which is engaging in the contracting business in the performance of construction work requiring special skill and involving the use of specialized construction trades or crafts other than residential contracting.

6. Specialty dual licensed contracting, which is engaging in the contracting business in the performance of construction work requiring special skill and involving the use of specialized construction trades or crafts in residential and commercial contracting.

7. Specialty residential contracting, which is engaging in the residential contracting business by the performance of construction work requiring special skill and involving the use of specialized construction trades or crafts within residential property lines.

### **§32-1103. Registrar of contractors; term; salary**

The governor shall appoint a registrar of contractors pursuant to section 38-211 for a term coterminous with that of the governor or until his successor is appointed and qualifies. The registrar is vested with all functions and duties relating to administration of this chapter. He shall receive compensation as determined pursuant to section 38-611.

### **§32-1104. Powers and duties**

A. The registrar, in addition to other duties and rights provided for in this chapter, shall:

1. Maintain an office in Phoenix and in such other cities and towns in the state as the registrar deems advisable and necessary.

2. Maintain a complete indexed record of all applications and licenses issued, renewed, terminated, cancelled, revoked or suspended under this chapter, including timely notation of any judicial disposition on appeal, for a period of not less than seven years.

3. Furnish a certified copy of any license issued or an affidavit that no license exists or that a license has been cancelled or suspended including information as to the status on appeal of such cancellation or suspension, upon receipt of the prescribed fee, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein. The registrar shall also furnish certified copies of license bonds or cash deposit certificates upon receipt of the prescribed fee. Fees charged pursuant to this paragraph shall be at a rate of ten dollars per hour, except that the minimum fee charged pursuant to this paragraph shall be ten dollars.

4. Employ such deputies, investigators and assistants and procure such equipment and records as are necessary to enforce this chapter. With respect to the enforcement of section 32-1164, the registrar or the registrar's investigators are vested with the authority to issue a citation to any violators of this chapter in accordance with section 13-3903. When the registrar or the registrar's investigators conduct investigations they are authorized to receive criminal history record information from the department of public safety and other law enforcement agencies.

5. Make rules the registrar deems necessary to effectually carry out the provisions and intent of this chapter. Such rules shall include the adoption of minimum standards for good and workmanlike construction. In the adoption of such rules of minimum standards, the registrar shall be guided by established usage and procedure as found in the construction business in this state. If the rules of minimum standards adopted by the registrar are in any manner inconsistent with a building or other code of the state, a county, city or other political subdivision or local authority of the state, compliance with such code shall constitute good and workmanlike construction for the purposes of this chapter.

6. Apply the following to proposed rule changes:

(a) The registrar of contractors, at the time the registrar files notice of proposed rule change with the secretary of state in compliance with title 41, chapter 6, shall mail to each trade association that qualifies in accordance with subdivision (b), and any other individual holding a bona fide contractor's license who qualifies in accordance with subdivision (b), a copy of the notice of proposed rule change.

(b) Every trade association in this state allied with the contracting business that files a written request that a notice be mailed to it and shows that the association has an interest in the rules of the registrar of contractors shall receive a copy thereof, as set forth in subdivision (a). Such filing of a request shall be made every two years during the month of January, and it shall contain information as to the nature of the association and its mailing address. Any duly licensed contractor who files a written request shall receive a copy of the proposed rule changes in accordance with this paragraph. Each such request shall be made every two years during the month of January.

7. Prepare and furnish decals and business management books when deemed advisable by the registrar. A reasonable fee may be charged for such decals and business management books.

8. Refer criminal violations of this chapter committed by persons previously named on a license which has been revoked to the appropriate law enforcement agency or prosecuting authority.

B. The registrar may develop and institute programs to do any of the following:

1. Educate the public and contractors licensed pursuant to this chapter regarding statutes, rules, policies and operations of the agency.

2. Assist in the resolution of disputes in an informal process before a reportable written complaint is filed. The registrar shall notify the licensed contractor in an alleged dispute before a written complaint is filed and allow the contractor the opportunity to be present at any inspection regarding the alleged dispute. The registrar shall give the contractor at least five days' notice before the inspection. Issues in the alleged dispute under this section shall not be limited in number and shall not be considered formal written complaints. The homeowner reserves the right to deny access to the contractor under this informal complaint process. The registrar shall notify the contractor and the homeowner in writing of the registrar's findings within five days after the date of the inspection. The registrar shall not post any information regarding the informal complaint process as part of a licensee's record on the registrar's web site.

3. Develop, manage, operate and sponsor construction related programs designed to benefit the public in conjunction with other private and public entities.

C. The registrar may adopt rules for the posting of names of applicants and personnel of applicants for contractors' licenses and furnish copies of such posting lists upon written request. The name and address of the applicant, together with the names and addresses and official capacity of all persons associated with the applicant who have signed the application, shall be publicly posted in the place and manner to be prescribed by the registrar for a period of not less than twenty days,

except as otherwise provided in this subsection, commencing on the day designated by the registrar of contractors. The registrar may waive a part of the posting period when the records reflect that the applicant or qualifying party has previously undergone the twenty day posting for a previous license. A reasonable charge of not to exceed two dollars per month may be made for compilation, printing and postage for such posting lists.

D. The registrar may accept voluntary gifts, grants or matching monies from public agencies or enterprises for the conduct of programs that are authorized by this section or that are consistent with the purpose of this chapter.

#### **§32-1105. Rule making powers for purposes of classifying and reclassifying contractors**

A. The registrar may adopt rules necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of operations of a licensed contractor within any of the branches of the contracting business, as described in this chapter, to those divisions thereof in which the contractor is classified and qualified to engage.

B. The registrar shall establish by rule license classifications for dual licensed contractors. A contractor classified as a dual licensed contractor may perform equivalent construction work on both commercial and residential projects under a single license. The registrar shall adopt rules necessary to establish the scope of work that may be done under the dual license classifications.

C. A licensee may apply for classification and be classified in more than one classification or division thereof after the licensee meets the qualifications prescribed by the registrar for such additional classification or classifications. A single form of application shall be adopted for all licenses issued by the registrar.

D. Nothing in this chapter shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades other than those in which the specialty contractor is licensed is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

#### **§32-1106. Enforcement powers**

In any investigation, proceeding or hearing he is empowered to institute, conduct or hold under this chapter, the registrar, a deputy registrar, an assistant, an administrative law judge or an investigator may administer oaths, certify to official acts, issue subpoenas for attendance of witnesses and production of books, papers and records, and exercise the same powers in this regard as conferred upon the corporation commissioners and public officers by the provisions of section 40-244 and section 12-2212. All the provisions of such sections are incorporated into this section with the same force and effect as if herein set forth at length, and wherever in such sections the term "commission" or "commissioners" or similar designation occurs, it shall, for the purpose of this reference mean the "registrar of contractors."

#### **§32-1107. Registrar of Contractors fund**

A. The registrar of contractors fund is established. The registrar of contractors shall administer the fund. The registrar shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this chapter, except monies collected for the residential contractors' recovery fund and the contractors' cash bond fund and monies received from civil penalties, as follows:

1. For fiscal year 1994-1995, seventy per cent in the registrar of contractors fund and thirty per cent in the state general fund.

2. For fiscal year 1995-1996, eighty per cent in the registrar of contractors fund and twenty per cent in the state general fund.

3. For all fiscal years that begin after June 30, 1996, ninety per cent in the registrar of contractors fund and ten per cent in the state general fund.

B. The registrar shall use monies in the registrar of contractors fund for carrying out the powers and duties of the registrar and for the purposes of this chapter. Monies deposited in the registrar of contractors fund are subject to section 35-143.01.

## ARTICLE 2. LICENSING

### **§32-1121. Persons not required to be licensed; penalties**

A. This chapter shall not be construed to apply to:

1. An authorized representative of the United States government, this state or any county, incorporated city or town, reclamation district, irrigation district or other municipality or political subdivision of this state.

2. Trustees of an express trust that is not formed for the purpose of conducting business as a contractor or officers of a court, if they are acting within the terms of their trust or office.

3. Public utilities operating under regulation of the corporation commission or construction, repair or operation incidental to discovering or producing petroleum or gas, or the drilling, testing, abandoning or other operation of a petroleum or gas well, if performed by an owner or lessee.

4. Any materialman, manufacturer or retailer **who furnishes** finished products, materials or articles of merchandise **and** who does not install or attach such items or installs or attaches such items if the total value of the sales contract or transaction involving such items and the cost of the installation or attachment of such items to a structure does not exceed one thousand dollars, including labor, materials and all other items, but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure. The materialman, manufacturer or retailer shall inform the purchaser that the installation may also be performed by a licensed contractor whose name and address the purchaser may request.

5. Owners of property who improve such property or who build or improve structures or appurtenances on such property and who do the work themselves, with their own employees or with duly licensed contractors, if the structure, group of structures or appurtenances, including the improvements thereto, are intended for occupancy solely by the owner and are not intended for occupancy by members of the public as the owner's employees or business visitors and the structures or appurtenances are not intended for sale or for rent. In all actions brought under this chapter, **except an action against an owner-occupant as defined in section 33-1002**, proof of the sale or rent or the offering for sale or rent of any such structure by the owner-builder within one year after completion or issuance of a certificate of occupancy is prima facie evidence that such project was undertaken for the purpose of sale or rent. For the purposes of this paragraph, "sale" or "rent"

includes any arrangement by which the owner receives compensation in money, provisions, chattels or labor from the occupancy or the transfer of the property or the structures on the property.

6. Owners of property who are acting as developers and who build structures or appurtenances to structures on their property for the purpose of sale or rent and who contract for such a project with a general contractor licensed pursuant to this chapter and owners of property who are acting as developers, who improve structures or appurtenances to structures on their property for the purpose of sale or rent and who contract for such a project with a general contractor or specialty contractors licensed pursuant to this chapter. To qualify for the exemption under this paragraph, the licensed contractors' names and license numbers shall be included in all sales documents.

7. Architects or engineers who are engaging in their professional practice as defined in chapter 1 of this title and who hire or offer to hire the services of a contractor for preconstruction activities relating to investigation and discovery including:

- (a) Subsurface utility location and designation services.
- (b) Potholing.
- (c) Drilling for any of the following:
  - (i) Soil samples.
  - (ii) Rock samples.
  - (iii) Pavement samples.
- (d) Locating existing features of a building or structure including existing electrical, mechanical, plumbing and structural members.

8. A person licensed, certified or registered pursuant to chapter 22 of this title or a person working under the direct supervision of a person certified or qualified pursuant to chapter 22 of this title to the extent the person is engaged in structural pest control.

9. The sale or installation of finished products, materials or articles of merchandise which are not fabricated into and do not become a permanent fixed part of the structure. This exemption does not apply if a local building permit is required, if the total price of the finished product, material or article of merchandise, including labor but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is more than one thousand dollars or if the removal of the finished product, material or article of merchandise causes damage to the structure or renders the structure unfit for its intended use.

10. Employees of the owners of condominiums, townhouses, cooperative units or apartment complexes of four units or less or the owners' management agent or employees of the management agent repairing or maintaining structures owned by them.

11. Any person who engages in the activities regulated by this chapter, as an employee of an exempt property owner or as an employee with wages as the person's sole compensation.

12. A surety company or companies which are authorized to transact business in this state and which undertake to complete a contract on which they issued a performance or completion bond, provided all construction work is performed by duly licensed contractors.

13. Insurance companies which are authorized to transact business in this state and which undertake to perform repairs resulting from casualty losses pursuant to the provisions of a policy, provided all construction work is performed by duly licensed contractors.

14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials and all other items, but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, is less than one thousand dollars. The work or operations which are exempt under this paragraph shall be of a casual or minor nature. This exemption does not apply:

(a) In any case in which the performance of the work requires a local building permit.

(b) In any case in which the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than one thousand dollars, excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, for the purpose of evasion of this chapter or otherwise.

(c) To a person who utilizes any form of advertising to the public in which the person's unlicensed status is not disclosed by including the words "not a licensed contractor" in the advertisement.

15. A person who is licensed, certified or registered pursuant to title 41, chapter 16 and who is not otherwise required to be licensed under this chapter or an employee of such person.

16. A person who functions as a gardener by performing lawn, garden, shrub and tree maintenance.

B. A person who is licensed to perform work in a particular trade pursuant to this chapter shall not be required to obtain and maintain a separate license for mechanical or structural service work performed within the scope of such trade by such person.

C. Any person who does not have an exemption from licensure pursuant to subsection A, paragraph 14, subdivision (c) of this section is subject to prosecution for a violation of section 44-1522. The attorney general may investigate the act or practice and take appropriate action pursuant to title 44, chapter 10, article 7.

### **§32-1122. Qualifications for license**

A. A contractor's license shall be issued only by act of the registrar of contractors. The registrar shall:

1. Classify and qualify applicants for a license.
2. If necessary, change the license classification of a licensee in the case of a title reclassification, with or without a bond rider for the purpose of continuing liability on the bond.
3. Conduct investigations the registrar deems necessary.
4. Establish written examinations if deemed necessary to protect the health and safety of the public.

B. To obtain or renew a license under this chapter, the applicant shall:

1. Submit to the registrar of contractors a verified application on forms that are prescribed by the registrar of contractors and that contain the following information and shall advise the registrar of any change in the information within thirty days:

- (a) A designation of the classification of license that is sought by the applicant.
- (b) If the applicant is an individual, the applicant's name and address.
- (c) If the applicant is a partnership, the names and addresses of all partners with a designation of any limited partners.
- (d) If the applicant is a corporation, an association or any other organization, the names and addresses of the president, vice-president, if any, secretary and treasurer or the names and addresses of the functional equivalent of these officers, the directors and the owners of twenty-five per cent or more of the stock or beneficial interest.
- (e) The name and address of the qualifying party.
- (f) If the applicant is a corporation, evidence that the corporation is in good standing with the corporation commission.
- (g) The address or location of the applicant's place of business and the mailing address if it is different from the applicant's place of business.
- (h) The applicant's current privilege license number issued pursuant to section 42-5005.
- (i) Proof that the applicant has complied with the statutes or rules governing workers' compensation insurance.

2. Submit the appropriate bond and fee required under this chapter.

C. To obtain a contractor's license under this chapter other than a residential contractor's license, the applicant shall submit a detailed statement of current financial condition containing information required by the registrar of contractors on a form furnished by or acceptable to the registrar of contractors. Notwithstanding any other law, a swimming pool contractor shall also submit a detailed statement of current financial condition as required by this subsection.

D. To obtain or renew a license under this chapter, each person shall be of good character and reputation. Lack of good character and reputation may be established by showing that a person has engaged in contracting without a license or committed any act that, if committed or done by any licensed contractor, would be grounds for suspension or revocation of a contractor's license or by showing that the person was named on a contractor's license that was suspended or revoked in another state.

E. To obtain a license under this chapter, a person shall not have had a license refused or revoked, within one year before the person's application, or shall not have engaged in the contracting business, nor shall the person have submitted a bid without first having been licensed within one year before the person's application, nor shall a person act as a contractor between the filing of the application and actual issuance of the license. The registrar may find any of those actions or circumstances to be excusable if there was reasonable doubt as to the need for licensure or the actions of the applicant did not result in an unremedied hardship or danger or loss to the public. A person who has been convicted of contracting without a license is not eligible to obtain a license under this chapter for one year after the date of the last conviction.

F. Before a license is issued, the qualifying party shall:

1. Have had a minimum of four years' practical or management trade experience, at least two of which must have been within the last ten years, dealing specifically with the type of construction, or its equivalent, for which the applicant is applying for a license. Technical training in an accredited college or university or in a manufacturer's accredited training program may be substituted for a

portion of such experience, but in no case may credited technical training exceed two years of the required four years' experience. The registrar of contractors may reduce the four years' practical or management experience requirement if in the registrar's opinion it has been conclusively shown by custom and usage in the particular industry or craft involved that the four year requirement is excessive. The registrar may waive the work experience documentation and verification or the examination requirement if the records reflect that the qualifying party is currently or has previously been a qualifying party for a licensee in this state in the same classification within the preceding five years.

2. Successfully show, by written examination taken not more than two years before application, if required, qualification in the kind of work for which the applicant proposes to contract, the applicant's general knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and the rules adopted by the registrar of contractors pursuant to this chapter, demonstrate knowledge and understanding of construction plans and specifications applicable to the particular industry or craft and of the standards of construction work and techniques and practices in the particular industry or craft and demonstrate a general understanding of other related construction trades, in addition to any other matters as may be deemed appropriate by the registrar to determine that the qualifying party meets the requirements of this chapter. The registrar shall maintain multiple versions of examinations for each type of license that requires an examination.

G. No license shall be issued to a minor, to any partnership in which one of the partners is a minor or to any corporation in which a corporate officer is a minor.

H. Before receiving, renewing and holding a license pursuant to this chapter, the registrar may require a license applicant or licensee to submit to the registrar a full set of fingerprints and the fees required in section 41-1750. The registrar shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

### **§32-1123. Unlicensed contractors; contract bidding; license denial; exemptions; warning**

A. Except as provided in subsection D of this section, if an entity that is not licensed pursuant to this chapter bids on a contract for a project with an aggregate worth of more than one thousand dollars, excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, the registrar shall not issue the entity a license pursuant to this chapter for one year after the date of the bid.

B. This section does not apply to an entity that bids on a contract for either of the following:

1. A department of transportation project.
2. A project that is subject to the federal acquisition regulation, title 48 Code of Federal Regulations, including the department of defense federal acquisition regulation.

C. This section does not affect the licensing exemptions prescribed in section 32-1121.

D. If an entity bids on a contract for a project pursuant to subsection A of this section and the project has an aggregate worth of more than one thousand dollars, excluding any electrical fixture or



appliance that was designed by the manufacturer, that is unaltered, unchanged or unmodified by any person, that can be plugged into a common household electrical outlet utilizing a two pronged or three pronged electrical connector and that does not use any other form of energy, including natural gas, propane or other petroleum or gaseous fuel, to operate or is attached by a nail, screw or other fastening device to the frame or foundation of any residential structure, and less than twenty thousand dollars, the registrar shall issue the entity a written warning relating to the unlicensed activity if the registrar has not previously issued the entity a warning.

#### **§32-1123.01. Staggered periods of licensure; biennial renewal**

The registrar shall maintain a system of staggered licensure to distribute the work of licensure throughout the twelve months of the year. From and after January 1, 1993, the registrar shall implement a system for biennial license renewal and provide for proration of license renewal fees for that purpose. The registrar may grant an exception to the biennial licensing or biennial renewal requirements of this section and may allow an annual renewal for up to two years based on a written petition by a contractor claiming that the biennial requirements would cause a real and immediate hardship. The registrar shall notify the contractor in writing of the decision and shall specify the terms of the exception if granted.

#### **§32-1124. Issuance and display of license; suspension**

A. Upon receipt by the registrar of the fee required by this chapter and an application furnishing complete information as required by the registrar, the registrar shall notify the applicant within sixty days from the date of the filing of a complete application of the action taken on the application, and if the registrar determines that the applicant is qualified to hold a license in accordance with this chapter, the registrar shall issue a license to the applicant permitting the applicant to engage in business as a contractor under the terms of this chapter.

B. Licenses issued under this chapter and any renewals shall be signed by the registrar or the registrar's designated representative and by the licensee. The license shall be nontransferable, and satisfactory evidence of possession shall be exhibited by the licensee upon demand. The license number appearing on any licenses held by the licensee shall be preceded by the acronym "ROC" and shall be posted in a conspicuous place on premises where any work is being performed, shall be placed on all written bids submitted by the licensee and shall be placed on all advertising, letterheads and other documents used by the licensee in the conduct of business regulated by this chapter. A violation of this subsection relating to posting and placement of license numbers shall be, at the discretion of the registrar, grounds for disciplinary action pursuant to section 32-1154, subsection A, paragraph 13, but not grounds for preventing the award of a contract, voiding an awarded contract, or any other claim or defense against the licensee. For the purposes of this subsection, advertising does not include a trade association directory listing that is distributed solely to the members of the association and not to the general public.

C. If an application for a license is denied for any reason provided in this chapter, the application fee paid by the applicant shall be forfeited and deposited pursuant to section 32-1107. A reapplication for a license shall be accompanied by the fee fixed by this chapter.

D. On issuance or renewal of a license, the registrar, at the request of a licensee, shall issue a single license certificate showing all contracting licenses held by the licensee which are currently in good standing and their dates of expiration.

E. The registrar may establish procedures to allow a licensee to establish a common expiration or renewal date for all licenses issued to the licensee and may provide for proration of license fees for that purpose.

F. The registrar shall suspend by operation of law a license issued under this chapter if any of the following occurs:

1. The licensed entity is dissolved. The dissolution of the licensed entity includes the death of a sole owner, a change to the partnership by either adding or removing a partner, the revocation or dissolution of corporate authority or the dissolution of a limited liability company or limited liability partnership.

2. The licensed entity does not have authority to do business in this state.

3. The license is obtained or renewed with an insufficient funds check. The license remains suspended until the registrar receives a certified check, a money order or cash as payment for the license fees and assessments.

#### **41-1065. Hearing on denial of license or permit**

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by section 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

#### **§32-1125. Renewal of license; qualifying party**

A. **Except as provided in section 32-4301**, a license issued under this chapter shall be suspended on the day following its renewal date by operation of law. An application for renewal of any current contracting license addressed to the registrar, with a valid bond or cash deposit on file with the registrar, accompanied by the required fee and received by the registrar or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the licensee to operate as a contractor until actual issuance of the renewal license. The registrar may refuse to renew a license if a licensee or person has committed or been found guilty of any act listed in section 32-1154.

B. A license which has been suspended by operation of law for failure to renew may be reactivated and renewed within one year of its suspension by filing the required application and payment of the application fee in the amount provided for renewal in this chapter in addition to a fifty dollar fee. When a license has been suspended for one or more years for failure to renew, a new application for a license must be made and a new license issued in accordance with this chapter.

C. A licensee may make written application to the registrar for exemption from a qualifying party. The applicant shall show to the satisfaction of the registrar that during the past five years:

1. The license has been in effect.

2. A transfer of ownership of fifty per cent or more of the stock, if applicable, or beneficial interest, in the licensee has not occurred.

3. No more than five valid complaints which have not been resolved by the licensee, as determined by the registrar, have been filed against the licensee.

The application shall be approved or denied within thirty days after its receipt. If the application is not approved, the licensee may within thirty days request a hearing to be held pursuant to section 32-1156. If the application is approved, the exemption takes effect immediately.

D. A licensee which is exempt from the requirement for a qualifying party pursuant to subsection C of this section may be required by the registrar after a hearing to obtain a qualifying party within sixty days on a finding that:

1. A transfer of ownership of fifty per cent or more of the stock, if applicable, or beneficial interest, in the licensee has occurred.

2. A violation of section 32-1154 has occurred.

### **§32-1125.01. Inactive license**

A. A contractor may request the registrar, on forms prescribed by the registrar, to inactivate his current license for a period not to exceed five years at one time by giving written notice to the registrar. The registrar may, in the absence of any disciplinary proceeding or disciplinary suspension and upon payment of reasonable fees determined by the registrar, issue to the contractor an inactive license certificate. The inactive license certificate may consist of an endorsement upon the contractor's license stating that the license is inactive. The registrar may not refund any of the license renewal fee which a contractor paid prior to requesting inactive status.

B. A contractor's license which is not suspended or revoked and is inactive may be reactivated as an active license upon payment of the current renewal fee and thirty days' written notice to the registrar. No examination may be required to reactivate an inactive license. If the license is not reactivated within five years, a new application for licensing must be made unless the contractor requests, on forms prescribed by the registrar, to inactivate the license for an additional period not to exceed five years. No contractor may inactivate the license more than twice.

C. The holder of an inactive license shall not practice as a contractor until his license is reactivated as an active license.

D. The inactive status of a contractor's license shall not bar any disciplinary action by the registrar against a licensed contractor for any of the grounds stated in this chapter.

### **§32-1126. Fees**

A. The license fees prescribed by this chapter shall be as follows:

1. Application fees for an original biennial license:

(a) For general residential contracting and subclassifications of general residential contracting, not more than five hundred dollars.

(b) For general commercial contracting and subclassifications of general commercial contracting, not more than one thousand five hundred dollars.

(c) For general dual licensed contracting, not more than two thousand dollars.

(d) For specialty residential contracting, not more than three hundred fifty dollars.

(e) For specialty commercial contracting, not more than one thousand dollars.

(f) For specialty dual licensed contracting, not more than one thousand three hundred fifty dollars.

2. Biennial renewal fee:

(a) For general residential contracting and subclassifications of general residential contracting, not more than three hundred twenty dollars.

(b) For general commercial contracting and subclassifications of general commercial contracting, not more than one thousand dollars.

(c) For general dual licensed contracting, not more than one thousand three hundred twenty dollars.

(d) For specialty residential contracting, not more than two hundred seventy dollars.

(e) For specialty commercial contracting, not more than nine hundred dollars.

(f) For specialty dual licensed contracting, not more than one thousand one hundred seventy dollars.

B. The registrar may establish reasonable fees for services performed by the registrar relating to reexaminations, processing of applications for change of qualifying party and approval of name changes on licenses.

C. The penalty for failure to apply for renewal of a license within the time prescribed by this chapter shall be fifty dollars.

D. The registrar may establish a separate fee for examination.

E. The registrar may contract with private testing services to establish and administer such examinations and may authorize the payment of the examination fee to the private testing service.

### **§32-1127. Responsible managing employee and qualifying party; definitions**

The terms "responsible managing employee" and "qualifying party" shall, for the purpose of administering this chapter, be synonymous, and shall mean an employee who is regularly employed by the licensee and is actively engaged in the classification of work for which such responsible managing employee qualifies in behalf of the licensee. While engaged as a qualifying party for a licensee, the qualifying party shall not take other employment that would conflict with his duties as qualifying party or conflict with his ability to adequately supervise the work performed by the licensee. Such person may act in the capacity of the qualifying party for one additional licensee if one of the following conditions exists:

1. There is a common ownership of at least twenty-five per cent of each licensed entity for which the person acts in a qualifying capacity.

2. One licensee is a subsidiary of another licensee for which the same person acts in a qualifying capacity. "Subsidiary" as used in this section means a corporation of which at least twenty-five per cent is owned by the other licensee.

### **§32-1128. Asbestos educational pamphlet**

A. The director of occupational safety and health within the industrial commission with the assistance of the registrar of contractors and the director of the department of environmental quality shall prepare an educational pamphlet relating to asbestos to help contractors identify asbestos in the workplace and to inform them of state and federal asbestos rules and of the health hazards associated with asbestos contact.

B. The registrar shall distribute asbestos educational pamphlets with each contractor's license or license renewal.

### **§32-1129. Definitions**

In sections 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04 and 32-1129.05, unless the context otherwise requires:

1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the excavation of or other development or improvement to land.

2. "Contractor" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with an owner to perform work under a construction contract.

3. "Owner" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that causes a building, structure or improvement to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee.

4. "Subcontractor" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with a contractor or another subcontractor to perform a portion of the work under a construction contract.

**§32-1129.01. Progress payments by owner; conditions; interest**

A. By mutual agreement with a contractor, an owner may make progress payments on construction contracts of less than sixty days. An owner shall make progress payments to a contractor on all other construction contracts. Progress payments shall be made on the basis of a duly certified and approved billing or estimate of the work performed and the materials supplied during the preceding thirty day billing cycle, or such other billing cycle as stated in the construction contract. If billings or estimates are to be submitted in other than thirty day billing cycles, the construction contract and each page of the plans, including bid plans and construction plans, shall specifically identify such other billing cycle in a clear and conspicuous manner as prescribed in subsection B. Except as provided in subsection C, the owner shall make progress payments to the contractor within seven days after the date the billing or estimate is certified and approved pursuant to subsection D.

B. A construction contract may provide for a billing cycle other than a thirty day billing cycle if the construction contract specifically sets forth such other billing cycle and either of the following applies:

1. The following legend or substantially similar language setting forth the other billing cycle appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of billings or estimates in billing cycles other than thirty days. Billings or estimates for this contract shall be submitted as follows:

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2. The following legend or substantially similar language setting forth the other billing cycle appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of billings or estimates in billing cycles other than thirty days. A written description of such other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or its designated agent shall provide this written description on request.

C. An owner may make progress payments later than seven days after the date the billing or estimate is certified and approved if both:

1. The construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after certification and approval.

2. The following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Payment Provision

This contract allows the owner to make payment within \_\_\_\_ days after certification and approval of billings and estimates.

D. A billing or estimate shall be deemed approved and certified fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement detailing those items in the billing or estimate that are not approved and certified. An owner may decline to approve and certify a billing or estimate or portion of a billing or estimate for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, failure to comply with other material provisions of the construction contract, third party claims filed or reasonable evidence that a claim will be filed, failure of the contractor or a subcontractor to make timely payments for labor, equipment and materials, damage to the owner, reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum or a reasonable amount for retention. The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to any person designated by the owner for the receipt of these submissions or for review or approval of the billing or estimate.

E. An owner may withhold from a progress payment only an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur to correct any items set forth in writing pursuant to subsection D.

F. An owner may extend the period within which the billing or estimate is certified and approved if both:

1. The construction contract in a clear and conspicuous manner specifically provides for an extended time period within which a billing or estimate shall be certified and approved defined by a specified number of days after the owner has received the billing or estimate.

2. The following legend or substantially similar language, setting forth the specified number of days, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Certification and

Approval Period Provision

This contract allows the owner to certify and approve billings and estimates within \_\_\_\_ days after the billings and estimates are received from the contractor.

G. After the effective date of a construction contract, an owner and contractor may change the number of specified days after certification and approval for the owner to make payment to the contractor or within which a billing or estimate must be certified and approved. Any contractor or

subcontractor that does not provide written consent to the change will continue to be paid as previously agreed.

H. When a contractor completes and an owner approves and certifies all work under a construction contract, the owner shall make payment in full on the construction contract within seven days. When a contractor completes and an owner approves and certifies all work under a portion of a construction contract for which the contract states a separate price, the owner shall make payment in full on that portion of the construction contract within seven days. On projects that require a federal agency's final approval or certification, the owner shall make payment in full on the construction contract within seven days of the federal agency's final approval or certification.

I. Payment shall not be required pursuant to this section unless the contractor provides the owner with a billing or estimate for the work performed or the material supplied in accordance with the terms of the construction contract between the parties.

J. A construction contract shall not alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely progress payments as provided under this article.

K. If an owner or a third party designated by an owner as the person responsible for making progress payments on a construction contract does not make a timely payment pursuant to this section, the owner shall pay the contractor interest at the rate of one and one-half per cent a month or fraction of a month on the unpaid balance, or at a higher rate as the parties to the construction contract agree.

L. On the written request of a subcontractor, the owner shall notify the subcontractor within five days after the issuance of a progress payment to the contractor. On the written request of a subcontractor, the owner shall notify the subcontractor within five days after the owner makes the final payment to the contractor on the construction contract.

M. In any action or arbitration brought to collect payments or interest pursuant to this section, the successful party shall be awarded costs and attorney fees in a reasonable amount.

N. If the owner and contractor are a single entity, that entity shall pay its subcontractors or material suppliers within fourteen days after the billing or estimate is certified and approved unless the deadlines for approval and certification or for payment have been modified pursuant to subsection C or F.

### **§32-1129.02. Performance and payment by contractor, subcontractor or material supplier; conditions; interest**

A. Notwithstanding the other provisions of this section, performance by a contractor, subcontractor or material supplier in accordance with the provisions of a construction contract entitles the contractor, subcontractor or material supplier to payment from the party with whom the contractor, subcontractor or material supplier contracts.

B. If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the contractor shall pay to its subcontractors or material suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven days of receipt by the contractor or subcontractor of each progress payment or final payment, the full amount received for such subcontractor's work and materials supplied based on work completed or materials supplied under the subcontract. Payment shall not be required pursuant to this subsection unless the subcontractor or material supplier provides to the contractor or subcontractor a billing or invoice for the work performed or material supplied in compliance with the terms of the contract between the parties. Each subcontractor or material supplier shall provide a waiver of any mechanic's or

materialman's lien conditioned upon payment for the work completed or material supplied. The contractor or subcontractor may require that such conditional waivers of lien be notarized. Any diversion by the contractor or subcontractor of payments received for work performed pursuant to a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. Violations of this section shall be grounds for suspension or revocation of a license or other disciplinary action by the registrar pursuant to section 32-1154, subsections B, C and D. The subcontractor or material supplier may notify the registrar of contractors and the owner in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

C. Nothing in this section prevents the contractor or subcontractor, at the time of application or certification to the owner or contractor, from withholding such application or certification to the owner or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or material not remedied, disputed work, failure to comply with other material provisions of the construction contract, third party claims filed or reasonable evidence that a claim will be filed, failure of the subcontractor to make timely payments for labor, equipment and materials, damage to a contractor or another subcontractor or material supplier, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.

D. If a periodic or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay its subcontractor or material supplier interest, except for periods of time during which payment is withheld pursuant to subsection C of this section, beginning on the eighth day, at the rate of one and one-half per cent per month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

E. Any licensed contractor, licensed subcontractor or material supplier who files a complaint with the registrar of contractors under this section shall be required to post a surety bond or cash deposit of five hundred dollars or one-half of the amount due, whichever is less, with the registrar to secure the payment of claims under this section. If the complaint is determined by the registrar to be without merit and frivolous, the registrar shall order the person who filed the complaint to pay one-half of the amount of the required surety bond or cash deposit to the respondent and one-half to the registrar for deposit into the state general fund. If no claim may be made under this section against the surety bond or cash deposit, the surety bond or cash deposit shall be returned to the complainant. The surety bond or cash deposit shall be in the name of the licensee or material supplier who files the complaint and shall be subject to claims by the registrar of contractors and the respondent licensee as provided in this section. The surety bond or cash deposit shall be conditioned upon and provide for payment upon the presentation of a certified copy of the order of the registrar and a certification by the complainant of nonpayment within thirty days after the order becomes final. The surety bond shall be executed by the complainant as principal with a corporation duly authorized to transact surety business in this state. Evidence of the surety bond shall be submitted to the registrar in a form acceptable to the registrar. The cash deposit shall be deposited, pursuant to sections 35-146 and 35-147, by the registrar in the contractors prompt pay complaint fund and shall be held for the payment of claims.

F. In any action or arbitration brought to collect payments or interest pursuant to this section, the successful party shall be awarded costs and attorney fees in a reasonable amount.



### **§32-1129.03. Interruption of performance of construction contract; damages; termination of contract**

A. A contractor licensed under this chapter may interrupt the performance of a construction contract without penalty or liability for breach of contract if any applicable law or rule requires the cessation of work or the contractor encounters any hazardous substance or hazardous material which is required to be removed or contained by any applicable law or rule and either of the following apply:

1. Any applicable law or rule prohibits the contractor from proceeding to remove or contain the hazardous material or hazardous substance unless the contractor is duly licensed and the contractor is not so licensed.

2. The removal or containment of the hazardous material or hazardous substance cannot be accomplished without a cessation of work.

B. A contractor licensed under this chapter whose work is impaired, impeded or prohibited under subsection A may interrupt performance of the construction contract as provided in this section only to the extent of the area affected by the hazardous materials or hazardous substances removed or contained by the owner or as otherwise required by applicable statute or rule.

C. A person who interrupts the performance of a construction contract under subsection A is entitled to reasonable and foreseeable damages caused by the delay unless the existence of the specific hazardous substance or hazardous material is disclosed in writing prior to entering into the contract. The right to damages is conditioned upon notification within a reasonable period of time to the owner of the discovery by the person of the existence of the hazardous material or hazardous substance. This section shall not affect any legal rights and remedies otherwise existing between the parties, including but not limited to rights to damages, setoff and counterclaim.

D. The owner may terminate the construction contract on payment to the contractor, subcontractor or other person whose work is delayed under subsection A of the amount of any services or materials supplied or expended which conform to the contract terms and specifications and the payment of damages subject to the provisions of subsection C to the date of the termination of the contract.

### **§32-1129.04. Construction contracts; suspension of performance; termination**

A. A contractor may suspend performance under a construction contract or terminate a construction contract for failure by the owner to make timely payment of the amount certified and approved pursuant to section 32-1129.01. A contractor shall provide written notice to the owner at least seven calendar days before the contractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the owner and contractor. A contractor shall not be deemed in breach of the construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection.

B. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner fails to make timely payment of amounts certified and approved pursuant to section 32-1129.01 for the subcontractor's work and the contractor fails to pay the subcontractor for the certified and approved work. A subcontractor shall provide written notice to the contractor and owner at least three calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the

contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.

C. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner makes timely payment of amounts certified and approved pursuant to section 32-1129.01 for the subcontractor's work but the contractor fails to pay the subcontractor for the certified and approved work. A subcontractor shall provide written notice to the contractor and owner at least seven calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.

D. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner declines to approve and certify portions of the contractor's billing or estimate pursuant to section 32-1129.01 for that subcontractor's work but the reasons for that failure by the owner to approve and certify are not the fault of or directly related to the subcontractor's work. A subcontractor shall provide written notice to the contractor and the owner at least seven calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.

E. A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials or services until the contractor or subcontractor is paid the amount that was certified and approved, together with any costs incurred for mobilization resulting from the shutdown or start-up of a project.

F. In any action or arbitration brought pursuant to this section, the successful party shall be awarded costs and attorney fees in a reasonable amount.

G. Written notice required under this section shall be deemed to have been provided if either of the following occurs:

1. The written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended.

2. The written notice is delivered at or sent by any means that provides written, third party verification of delivery to the last business address known to the party giving notice.

#### **§32-1129.05. Construction contracts; void provisions**

The following are against this state's public policy and are void and unenforceable:

1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state.

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract stating that a party to the contract cannot suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract pursuant to section 32-1129, 32-1129.01 or 32-1129.02.

#### **§32-1129.06. Applicability to state and political subdivisions**

Sections 32-1129.01, 32-1129.02, 32-1129.04 and 32-1129.05 do not apply to this state or political subdivisions of this state.

### **ARTICLE 2.1 RESIDENTIAL CONTRACTORS' RECOVERY FUND**

#### **§32-1131. Definitions**

In this article, unless the context otherwise requires:

1. "Assessment" means the contribution by a contractor to the residential contractors' recovery fund.

2. "Fund" means the residential contractors' recovery fund.

3. "Person injured" means any owner of residential real property which is classified as class three property under section 42-12003 and which is actually occupied or intended to be occupied by the owner as a residence including community property, tenants in common or joint tenants who are damaged by the failure of a residential contractor or a dual licensed contractor to adequately build or improve a residential structure or appurtenance on that real property. Included in this definition are lessees of residential real property who contract directly with a residential contractor or indirectly with a subcontractor of that contractor and homeowners' or unit owners' associations after transfer of control from the builder or developer for damages to the common elements within the complex.

4. "Residential contractor" means a contractor as defined in section 32-1101 who is licensed to perform work on residential property pursuant to this chapter and who engages in residential contracting.

#### **§32-1132. Residential contractors' recovery fund**

A. The residential contractors' recovery fund is established, to be administered by the registrar, from which any person injured by an act, representation, transaction or conduct of a residential contractor licensed pursuant to this chapter that is in violation of this chapter or the rules adopted pursuant to this chapter may be awarded in the county where the violation occurred an amount of not more than thirty thousand dollars for damages sustained by the act, representation, transaction or conduct. An award from the fund is limited to the actual damages suffered by the claimant as a direct result of the contractor's violation but shall not exceed an amount necessary to complete or repair a residential structure or appurtenance within residential property lines. Actual damages shall not be established by bids supplied by or the value of work performed by a person or entity that is not licensed pursuant to this chapter and that is required to be licensed pursuant to this chapter. If the claimant has paid a deposit or down payment and no actual work is performed or materials are delivered, the award of actual damages shall not exceed the exact dollar amount of the deposit or down payment plus interest at the rate of ten per cent a year from the date the deposit or down payment is made or not more than thirty thousand dollars, whichever is less. Interest shall not be paid from the fund on any other awards under this chapter unless ordered by a court of competent jurisdiction. An award from the fund shall not be available to persons injured by an act,

representation, transaction or conduct of a residential contractor who was not licensed pursuant to this chapter or whose license was in an inactive status, expired, cancelled, revoked, suspended or not issued at the time of the contract. No more than the maximum individual award from the fund shall be made on any individual residence or to any injured person. Notwithstanding any other provision of law, monies in the residential contractors' recovery fund shall not be directly awarded for attorney fees or costs except in contested cases appealed to the superior court.

B. Except as provided in section 32-1152, subsection C, every person making application for a contractor's license or for renewal of a contractor's license to engage in residential contracting shall pay an assessment of not more than six hundred dollars during the biennial license period for deposit in the fund. In the event that the registrar does not issue the license, this assessment shall be returned to the applicant.

### **§32-1134. Powers and duties of registrar**

A. The registrar shall:

1. Establish assessments and maintain the fund balance at a level sufficient to pay operating costs and anticipated claims using the cash basis of accounting.
2. Cause an examination of the fund to be made every three years by an independent certified public accountant.
3. File with the department of insurance an annual statement of the condition of the fund.
4. Employ accountants and attorneys from monies in the fund, but not to exceed ten thousand dollars in any fiscal year, that are necessary for the performance of the duties prescribed in this section.
5. Employ or contract with individuals and procure equipment and operational support, to be paid from or purchased with monies in the fund, but not to exceed ten per cent of the fund in any fiscal year as may be necessary to monitor, process or oppose claims filed by injured persons which may result in collection from the recovery fund.

B. Notwithstanding section 32-1135, the registrar may expend interest monies from the fund to increase public awareness of the fund. This expenditure shall not exceed fifty thousand dollars in any fiscal year.

### **§32-1134.01. Additional payments to fund**

If at any time the balance remaining in the residential contractors' recovery fund is less than two million dollars, every residential contractor who paid into the fund pursuant to section 32-1132 may be reassessed in an amount determined by the registrar pursuant to section 32-1134 and shall make the required payment into the fund. The registrar shall suspend a residential contractor's license for failure to make the required payment until the amount owed is paid in full.

### **§32-1134.02. Insufficiency of fund**

If at any time the monies deposited in the residential contractors' recovery fund are insufficient to satisfy any duly authorized claim or portion thereof, the registrar shall, when sufficient monies have been deposited in the residential contractors' recovery fund, satisfy any unpaid claims or portion of unpaid claims with priority for payment based on the time of filing a certified copy of the court order with the registrar.

### **§32-1135. Deposit of assessments**

The assessments received by the registrar for deposit in the fund shall be held in trust for carrying out the purposes of the fund. On notice from the registrar, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

### **§32-1136. Statute of limitations; recovery from fund**

A. An action for a judgment which may subsequently result in an order for collection from the fund shall not be commenced later than two years from the date of the commission of the act by the contractor that is the cause of the injury or from the date of occupancy. When any injured person commences action for a judgment which may result in collection from the fund, the injured person shall notify the registrar in writing to this effect at the time of the commencement of the action. The registrar may at any time intervene in and defend any such action.

B. When any injured person recovers a valid judgment against any residential contractor for such act, representation, transaction or conduct which is in violation of this chapter or the rules adopted pursuant to this chapter, the injured person may on twenty days' written notice to the registrar apply to the court for an order directing payment out of the fund, of the amount unpaid on the judgment, subject to the limitations stated in this article. If the injured person failed to give notice to the registrar at the time of commencement of the action as required by subsection A of this section, the court may direct payment out of the fund upon receipt of a consent to payment signed on behalf of the registrar. If the injured person has given notice to the registrar as required by subsection A of this section, the court may direct payment out of the fund either on receipt of a consent to payment signed on behalf of the registrar or, in the absence of any written consent, after the notice period required by subsection B of this section. If the court receives written objections by the registrar, the court shall not direct payment from the fund without affording the registrar a reasonable opportunity to present and support his objections.

C. The injured person shall not be the spouse of the residential contractor or the personal representative of the spouse of the residential contractor.

D. The court shall proceed on an application in a summary manner and, on the hearing, the injured person is required to show that he:

1. Has given notice as required by subsections A and B of this section.
2. Has obtained a judgment which has become final, as provided in subsection B of this section, stating the amount and the amount owing at the date of the application.
3. Has proceeded against any existing bond covering the residential contractor and has not collected upon such bond an amount of thirty thousand dollars or more, except when the award is made pursuant to subsection E of this section or section 32-1154.
4. Is not aware of any personal or real property or other assets of the debtor which can be applied in satisfaction of the judgment.

E. The court shall make an order directed to the registrar requiring payment from the fund of whatever sum it finds to be payable on the claim, in accordance with this section, if the court is satisfied on the hearing of the truth of all matters required to be shown by the injured person by subsection D of this section. The recovery limits established under this article apply to all judgments awarded after September 1, 2002. If the injured person has recovered a portion of his loss from sources other than the fund, the registrar, if the award is made pursuant to section 32-1154, or the court shall deduct the amount recovered from other sources from the amount of actual damages

suffered pursuant to section 32-1132, subsection A and direct the difference, not to exceed thirty thousand dollars, to be paid from the fund.

F. On receipt of a certified copy of the order specified in subsection E of this section, the registrar may authorize payment from the residential contractors' recovery fund even if an appeal has been instituted but not completed.

#### **§32-1137. Notice of authorized payment to injured person**

On authorization of payment from the residential contractors' recovery fund, the registrar shall notify the injured person that:

1. The amount authorized for payment is subject to repayment by the recipient if the judgment of the court is finally reversed.
2. It is the responsibility of the recipient to respond to an appeal from the judgment.
3. On appeal from the judgment, postponement of acceptance by the injured person of the amount authorized for payment does not operate as a waiver of any rights of the injured person.

#### **§32-1138. Subrogation**

The state has the right of subrogation to the extent of payments made from the residential contractors' recovery fund including the right to collect from a bond, cash payment or alternative to cash payment made pursuant to section 32-1152 or 32-1152.01. The registrar and the attorney general shall promptly enforce all subrogation claims.

#### **§32-1139. Liability of fund for each residential contractor's license; suspension of license; repayment**

A. The liability of the fund shall not exceed two hundred thousand dollars for any one residential contractor's license. If claims against the fund on behalf of any one residential contractor's license exceed two hundred thousand dollars, the claims shall be paid in order of the date of entry of the order of the registrar or court, and the registrar or a court entering an order for payment after the sum of two hundred thousand dollars has been paid from the fund shall modify the order indicating that no further recovery from the fund shall be allowed.

B. If any amount is paid from the fund in settlement of a claim arising from the act, representation, transaction or conduct of a residential contractor, the license of the contractor shall be automatically suspended by operation of law until the amount paid from the fund is repaid in full, plus interest at the rate of ten per cent a year. Any person who is or was, at the time of the act or omission, named on a license that has been suspended because of a payment from the recovery fund is not eligible to receive a new license or retain another existing license that also shall be suspended by operation of law, nor shall any suspended license be reactivated, until the amount paid from the fund is repaid as provided in this subsection.

#### **§32-1140. Disciplinary action against contractor**

This article does not limit the authority of the registrar to take disciplinary action against any licensed contractor for a violation of this chapter, or of the rules and regulations of the registrar, nor does the repayment in full of all obligations to the fund by any contractor nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules and regulations.

## **ARTICLE 3. REGULATION**

### **§32-1151. Engaging in contracting without license prohibited**

It is unlawful for any person, firm, partnership, corporation, association or other organization, or a combination of any of them, to engage in the business of, submit a bid or respond to a request for qualification or a request for proposals for construction services as, act or offer to act in the capacity of or purport to have the capacity of a contractor without having a contractor's license in good standing in the name of the person, firm, partnership, corporation, association or other organization as provided in this chapter, unless the person, firm, partnership, corporation, association or other organization is exempt as provided in this chapter. Evidence of securing a permit from a governmental agency or the employment of a person on a construction project shall be accepted in any court as prima facie evidence of existence of a contract.

#### **§32-1151.01. Change in ownership; notice to registrar**

A corporation, association or other organization which is a licensed contractor shall immediately notify the registrar of any transfer of ownership of fifty per cent or more of the stock or beneficial interest in the company.

#### **§32-1151.02. List of unlicensed contractors; web site publication**

A. The registrar shall maintain a list of persons who have been convicted of contracting without a license in violation of section 32-1151 or administratively adjudicated to have been contracting without a license after having been issued a civil citation pursuant to section 32-1166. The list shall be published on the registrar's web site.

B. The registrar shall remove a person from the list within ten business days when the person becomes licensed pursuant to this chapter and submits a written request to the registrar requesting the person's name to be removed from the list.

C. If a member of the public requests a copy of the list prescribed by subsection A, the registrar shall provide a copy of the list.

### **§32-1152. Bonds**

A. Before granting an original contractor's license, the registrar shall require of the applicant a surety bond in a form acceptable to the registrar or a cash deposit as provided in this section. No contractor's license may be renewed unless the applicant's surety bond or cash deposit is in full force and effect.

B. The bonds, or the cash deposit as provided in this section, shall be in the name of the licensee in amounts fixed by the registrar with the following schedules after giving due consideration to the volume of work and the classification contemplated by the applicant:

1. General commercial building contractors and subclassifications of general commercial contractors shall furnish a surety bond or cash deposit in an amount which shall be determined as follows:

(a) If the estimated annual volume of construction work of the applicant is ten million dollars or more, the applicant shall furnish a surety bond or cash deposit of not less than fifty thousand dollars or more than one hundred thousand dollars.

(b) If the estimated annual volume of construction work of the applicant is more than five million dollars and less than ten million dollars, the applicant shall furnish a surety bond or cash deposit of not less than thirty-five thousand dollars or more than seventy-five thousand dollars.

(c) If the estimated annual volume of construction work of the applicant is more than one million dollars and less than five million dollars, the applicant shall furnish a surety bond or cash deposit of not less than fifteen thousand dollars or more than fifty thousand dollars.

(d) If the estimated annual volume of construction work of the applicant is more than five hundred thousand dollars and less than one million dollars, the applicant shall furnish a surety bond or cash deposit of not less than ten thousand dollars or more than twenty-five thousand dollars.

(e) If the estimated annual volume of construction work of the applicant is more than one hundred fifty thousand dollars and less than five hundred thousand dollars, the applicant shall furnish a surety bond or cash deposit of not less than five thousand dollars or more than fifteen thousand dollars.

(f) If the estimated annual volume of construction work of the applicant is less than one hundred fifty thousand dollars, the applicant shall furnish a surety bond or cash deposit of five thousand dollars.

2. Specialty commercial contractors shall furnish a surety bond or cash deposit in an amount which shall be determined as follows:

(a) If the estimated annual volume of construction work of the applicant is ten million dollars or more, the applicant shall furnish a surety bond or cash deposit of not less than thirty-seven thousand five hundred dollars or more than fifty thousand dollars.

(b) If the estimated annual volume of construction work of the applicant is more than five million dollars and less than ten million dollars, the applicant shall furnish a surety bond or cash deposit of not less than seventeen thousand five hundred dollars or more than thirty-seven thousand five hundred dollars.

(c) If the estimated annual volume of construction work of the applicant is more than one million dollars and less than five million dollars, the applicant shall furnish a surety bond or cash deposit of not less than seven thousand five hundred dollars or more than twenty-five thousand dollars.

(d) If the estimated annual volume of construction work of the applicant is more than five hundred thousand dollars and less than one million dollars, the applicant shall furnish a surety bond or cash deposit of not less than five thousand dollars or more than seventeen thousand five hundred dollars.

(e) If the estimated annual volume of construction work of the applicant is more than one hundred fifty thousand dollars and less than five hundred thousand dollars, the applicant shall furnish a surety bond or cash deposit of not less than two thousand five hundred dollars or more than seven thousand five hundred dollars.

(f) If the estimated annual volume of construction work of the applicant is less than one hundred fifty thousand dollars, the applicant shall furnish a surety bond or cash deposit of two thousand five hundred dollars.

3. The total amount of the surety bond or cash deposit required of a licensee who holds more than one license under paragraphs 1 and 2 of this subsection shall be the sum of the surety bond or cash deposit required for each license based on the estimated annual volume of construction work of the applicant allocated to and performed under each license. The applicant at his option may post a single surety bond or cash deposit which shall be the sum of the bonds or deposits determined under this subsection for all such licenses.



4. General dual licensed contractors and subclassifications of general dual licensed contractors shall furnish a single surety bond or cash deposit with amounts for each classification of license that are determined based on the volume of commercial work as determined under paragraph 1 of this subsection and the volume of residential work as determined under paragraph 5 of this subsection. Liability under the bond or cash deposit shall be limited to the amount established for each commercial or residential license and is subject to the limitations and requirements set forth in subsection E of this section.

5. General residential contractors and sub classifications of general residential contractors shall furnish a surety bond or cash deposit in an amount of not more than fifteen thousand dollars and not less than five thousand dollars.

6. Specialty dual licensed contractors shall furnish a single surety bond or cash deposit with amounts for each classification of license that are determined based on the volume of commercial work as determined under paragraph 2 of this subsection and the volume of residential work as determined under paragraph 7 of this subsection. Liability under the bond or cash deposit shall be limited to the amount established for each commercial or residential license and is subject to the limitations and requirements set forth in subsection E of this section.

7. Specialty residential contractors shall furnish a surety bond or cash deposit in an amount of not more than seven thousand five hundred dollars and not less than one thousand dollars.

8. Dual licensed swimming pool contractors and residential swimming pool general contractors shall furnish a surety bond or cash deposit in the same amounts based on the volume of work as determined under paragraph 1 of this subsection for a general commercial contractor.

C. Dual licensed contractors and residential contractors shall also either:

1. Furnish an additional surety bond or cash deposit in the amount of two hundred thousand dollars solely for actual damages suffered by persons injured as described in section 32-1131. This bond shall be subject to the limitations on the amounts that may be awarded to individual claimants as established in section 32-1132.

2. Participate in the residential contractors' recovery fund and pay the assessment prescribed by section 32-1132.

D. The surety bonds shall be executed by the contractor as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the registrar in a form acceptable to the registrar. The contractor may in the alternative establish a cash deposit in the amount of the bond with the state treasurer in accordance with rules adopted by the registrar. Such cash bond monies shall be deposited, pursuant to sections 35-146 and 35-147, in the contractors' cash bond fund. The state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the state general fund. Such cash deposits may be withdrawn, if there are no outstanding claims against them, two years after the termination of the license in connection with which the cash is deposited. The cash deposit may be withdrawn two years after the filing of a commercial surety bond as a replacement to the cash deposit.

E. The bonds or deposit required by subsection B of this section shall be for the benefit of and shall be subject to claims by the registrar of contractors for failure to pay any sum required pursuant to this chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this section is for the benefit of and subject to claims by a licensee under this chapter or a lessee, owner or co-owner of nonresidential real property including, but not limited to, a tenant in common or joint tenant, or their successors in interest, who has a direct contract with the licensee against whose bond

or deposit the claim is made and who is damaged by the failure of the licensee to build or improve a structure or appurtenance on that real property at the time the work was performed in a manner not in compliance with the requirements of any building or construction code applicable to the construction work under the laws of this state or any political subdivision, or if no such code was applicable, in accordance with the standards of construction work approved by the registrar. The residential bond or deposit required by subsection B, paragraphs 4 through 8 of this section is for the benefit of and subject to claims by any person furnishing labor, materials or construction equipment on a rental basis used in the direct performance of a construction contract involving a residential structure or by persons injured as defined in section 32-1131. The bond or deposit required by subsection C, paragraph 1 of this section is for the benefit of and is subject to claims only by persons injured as described in section 32-1131. The person seeking recovery from the bond or cash deposit shall maintain an action at law against the contractor if claiming against the cash deposit or against the contractor and surety if claiming against the surety bond. If the person seeking recovery is required to give the notice pursuant to section 33-992.01, he is entitled to seek recovery only if he has given such notice and has made proof of service. The surety bond or cash deposit shall be subject to claims until the full amount thereof is exhausted. The court may award reasonable attorney's fees in a judgment against a contractor's surety bond or cash deposit. No suit may be commenced on the bond or for satisfaction from the cash deposit after the expiration of two years following the commission of the act or delivery of goods or rendering of services on which the suit is based, except that time for purposes of claims for fraud shall be measured as provided in section 12-543. The surety bond or cash deposit shall be continuous in form and shall be conditioned so that the total aggregate liability of the surety or cash deposit for all claims, including reasonable attorney's fees, shall be limited to the face amount of the surety bond or cash deposit irrespective of the number of years the bond or cash deposit is in force. If the corporate surety desires to make payment without awaiting court action, the amount of any bond filed in compliance with this chapter shall be reduced to the extent of any payment or payments made by the corporate surety in good faith thereunder. Any such payments shall be based on priority of written claims received by the corporate surety prior to court action. If more than one cash deposit exists, the judgment against the contractor shall state which cash deposit shall be used to satisfy the judgment. A certified copy of the judgment shall then be filed with the registrar, and such judgment shall specify that it may be satisfied from the contractor's cash deposit. Priority for payment shall be based upon the time of filing with the registrar. Upon receipt of a certified copy of the judgment, the registrar may authorize payment from the cash deposit of the amount claimed or of whatever lesser amount remains on file. In any action against a cash deposit, the claimant, at the time of filing suit, may notify the registrar in writing of the action against the cash deposit, but shall not name as a defendant in the action the registrar, the treasurer, or the state. Failure to so notify the registrar at the time of filing suit may result in the cash deposit being withdrawn by the licensee prior to judgment pursuant to subsection D of this section.

F. When a corporate surety cancels a bond, the surety shall not less than thirty days prior to the effective date of the cancellation give the principal and the registrar a written notice of the cancellation. Notice to the principal shall be by certified mail in a sealed envelope with postage fully prepaid. Proof of notice to the principal shall be made available to the registrar on request. On reduction or depletion of the cash deposit, the registrar shall immediately notify the licensee of said reduction or depletion and that the licensee must replenish the cash deposit or furnish a surety bond on or before thirty days from the date of said reduction or depletion or the contractor's license shall

be suspended on the thirtieth day without further notice or hearing. Notice to the contractor shall be by certified mail in a sealed envelope with postage fully prepaid thereon, addressed to the contractor's latest address of record in the registrar's office. The contractor's license shall be suspended by operation of law on the date the bond is canceled or thirty days from the date of reduction or depletion of the cash deposit unless a replacement bond or cash deposit is on file with the registrar.

G. The registrar and the state treasurer shall have no personal liability for the performance of duties relating to the bonds, cash deposits, certificates of deposit, investment certificates or share accounts required or permitted by this chapter as long as such duties are performed in good faith.

H. In the following instances the registrar, after a hearing, may require, as a condition precedent to issuance, renewal, continuation or removal of suspension of a license, a surety bond or cash deposit in an amount and duration to be fixed by the registrar based upon the seriousness of the violations, which shall be not more than ten times the amount required by subsection B of this section:

1. When a license of either the applicant or the qualifying party has been suspended or revoked or a surety bond or cash deposit requirement has been increased under section 32-1154 previously as the result of disciplinary action for a violation of this chapter.

2. When either the applicant or qualifying party was an officer, member, partner or qualifying party for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of such licensee's license and such applicant or qualifying party had knowledge of or participated in the act or omission which was the cause of such disciplinary action for a violation of this chapter.

3. The bonds required by this subsection shall be in addition to any other bond or cash deposit required by this chapter or any other bond required of a contractor by an owner or any other contracting party on any contract undertaken by him pursuant to the authority of such license.

#### **§32-1152.01. Alternatives to cash deposit**

A. As an alternative to the cash deposit provided for in section 32-1152, subsection B, a contractor may substitute any of the following:

1. Certificates of deposit assigned to the registrar, issued by banks doing business in this state and insured by the federal deposit insurance corporation.

2. Investment certificates or share accounts assigned to the registrar and issued by a savings and loan association doing business in this state and insured by the federal deposit insurance corporation.

B. The terms and conditions surrounding each of such types of security shall be prescribed by the registrar.

#### **§32-1153. Proof of license as prerequisite to civil action**

No contractor as defined in section 32-1101 shall act as agent or commence or maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required by this chapter without alleging and proving that the contracting party whose contract gives rise to the claim was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

**§32-1154. Grounds for suspension or revocation of license; continuing jurisdiction; civil penalty; recovery fund award**

A. The holder of a license or any person listed on a license pursuant to this chapter shall not commit any of the following acts or omissions:

1. Abandonment of a contract or refusal to perform after submitting a bid on work without legal excuse for the abandonment or refusal.

2. Departure from or disregard of plans or specifications or any building codes of the state or any political subdivision of the state in any material respect which is prejudicial to another without consent of the owner or the owner's duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications and code.

3. Violation of any rule adopted by the registrar.

4. Failure to comply with the statutes or rules governing social security, workers' compensation or unemployment insurance.

5. Failure to pay income taxes, withholding taxes or any tax imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

6. Misrepresentation of a material fact by the applicant in obtaining a license.

7. The doing of a wrongful or fraudulent act by the licensee as a contractor resulting in another person being substantially injured.

8. Conviction of a felony.

9. Failure in a material respect by the licensee to complete a construction project or operation for the price stated in the contract, or in any modification of the contract.

10. Aiding or abetting a licensed or unlicensed person to evade this chapter, knowingly or recklessly combining or conspiring with a licensed or unlicensed person, allowing one's license to be used by a licensed or unlicensed person or acting as agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter.

11. Failure by a licensee or agent or official of a licensee to pay monies in excess of seven hundred fifty dollars when due for materials or services rendered in connection with the licensee's operations as a contractor when the licensee has the capacity to pay or, if the licensee lacks the capacity to pay, when the licensee has received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.

12. Failure of a contractor to comply with any safety or labor laws or codes of the federal government, state or political subdivisions of the state.

13. Failure in any material respect to comply with this chapter.

14. Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification.

15. Acting in the capacity of a contractor under any license issued under this chapter in a name other than as set forth upon the license.

16. False, misleading or deceptive advertising whereby any member of the public may be misled and injured.

17. Knowingly contracting beyond the scope of the license or licenses of the licensee.

18. Contracting or offering to contract or submitting a bid while the license is under suspension or while the license is on inactive status.

19. Failure to notify the registrar in writing within a period of fifteen days of any disassociation of the person who qualified for the license. Such licensee shall have sixty days from the date of such disassociation to qualify through another person.

20. Subsequent discovery of facts which if known at the time of issuance of a license or the renewal of a license would have been grounds to deny the issuance or renewal of a license.

21. Having a person named on the license who is named on any other license in this state or in another state which is under suspension or revocation unless the prior revocation was based solely on a violation of this paragraph.

22. Continuing a new single family residential construction project with actual knowledge that a pretreatment wood-destroying pests or organisms application was either:

(a) Not performed at the required location.

(b) Performed in a manner inconsistent with label requirements, state law or rules.

23. Failure to take appropriate corrective action to comply with this chapter or with rules adopted pursuant to this chapter without valid justification within a reasonable period of time after receiving a written directive from the registrar. The written directive shall set forth the time within which the contractor is to complete the remedial action. The time permitted for compliance shall not be less than fifteen days from the date of issuance of the directive. A license shall not be revoked or suspended nor shall any other penalty be imposed for a violation of this paragraph until after a hearing has been held.

24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or otherwise intimidate any contractor or materialman from serving a preliminary notice pursuant to section 33-992.01.

B. The registrar may on the registrar's own motion, and shall on the written complaint of any **owner or contractor that is a party to a construction contract or a person who suffers a material loss or injury as a result of a contractor's failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards**, investigate the acts of any contractor within this state and may temporarily suspend, with or without imposition of specific conditions in addition to increased surety bond or cash deposit requirements, or permanently revoke any or all licenses issued under this chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section. **For the purposes of this subsection:**

1. **"Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the contractor's excavation of or other development or improvement to land if the registrar investigates the contractor's actions under this subsection.**

2. **"Owner" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that causes a building, structure or improvement to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee, pursuant to a construction contract.**

C. The expiration, cancellation, suspension or revocation of a license by operation of law or by decision and order of the registrar or a court of law or the voluntary surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such a license, or denying the renewal or right of renewal of such license.

D. The registrar may impose a civil penalty of not to exceed five hundred dollars on a contractor for each violation of subsection A, paragraph 23 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph 5, unless payment of any outstanding civil penalty is tendered.

E. The registrar shall impose a civil penalty of not to exceed one thousand dollars on a contractor for each violation of subsection A, paragraph 18 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic permanent revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph 5, unless payment of any outstanding civil penalty is tendered.

F. Notwithstanding any other provisions in this chapter, if a contractor's license has been revoked or has been suspended as a result of an order to remedy a violation of this chapter, and the contractor refuses or is unable to comply with the order of the registrar to remedy the violation, the registrar may order payment from the residential contractors' recovery fund to remedy the violation. The registrar shall serve the contractor with a notice setting forth the amount claimed or to be awarded. If the contractor contests the amount or propriety of the payment, the contractor shall respond within ten days of the date of service by requesting a hearing to determine the amount or propriety of the payment. Failure by the contractor to respond in writing within ten days of the date of service shall be deemed a waiver by the contractor of the right to contest the amount claimed or to be awarded. Service may be made by personal service to the contractor or by mailing a copy of the notice by registered mail with postage prepaid to the contractor's latest address of record on file in the registrar's office. If service is made by registered mail, it is effective five days after the notice is mailed. Except as provided in section 41-1092.08, subsection H, the contractor or injured person may seek judicial review of the registrar's final award pursuant to title 12, chapter 7, article 6.

### **§32-1155. Filing of complaint; resolution of complaint; service of notice; failure to answer**

A. Upon the filing of a written complaint with the registrar charging a licensee with the commission, within two years prior to the date of filing the complaint, of an act that is cause for suspension or revocation of a license, the registrar after investigation may issue a citation directing the licensee, within ten days after service of the citation upon the licensee, to appear by filing with the registrar the licensee's written answer to the citation and complaint showing cause, if any, why the licensee's license should not be suspended or revoked. Service of citation upon the licensee shall be fully effected by personal service or by mailing a true copy thereof, together with a true copy of the complaint, by registered mail in a sealed envelope with postage prepaid and addressed to the licensee at the licensee's latest address of record in the registrar's office. Service of the citation and complaint shall be complete at the time of personal service or five days after deposit in the mail. The two year period prescribed by this subsection shall commence on the earlier of the close of escrow or actual occupancy for new home or other new building construction and otherwise shall commence on completion of the specific project.

B. Failure of the licensee to answer within ten days after service shall be deemed an admission by the licensee of the licensee's commission of the act or acts charged in the complaint and the registrar may then suspend or revoke the licensee's license.

**C. The registrar shall not issue a citation for failure to perform work in a professional and workmanlike manner or in accordance with any applicable building codes and professional industry standards if either:**

**1. The contractor is not provided an opportunity to inspect the work within fifteen days after receiving a written notice from the registrar.**

**2. The contractor's work has been subject to neglect, modification or abnormal use.**

### **§32-1156. Hearings**

A. Title 41, chapter 6, article 10 applies to hearings under this chapter.

B. In a hearing or rehearing conducted pursuant to this section a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to the officer's or employee's duties relating to the management or operation of the corporation.

### **§32-1156.01. Restitution**

After a hearing pursuant to this article, an administrative law judge may recommend that a licensee provide restitution to any person who is injured or whose property is damaged by an action of the licensee.

### **§41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal**

A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

### **§32-1157. Appeals; costs; transcript**

A. Except as provided in section 41-1092.08, subsection H, a final decision of the registrar may be appealed to the superior court pursuant to title 12, chapter 7, article 6.

B. The party who is appealing may request in writing and shall receive from the registrar a certified copy of all documents and evidence in the administrative record. The party shall pay the registrar for the cost of producing the administrative record. Within thirty days after receipt of the

request and payment, the registrar shall certify the administrative record and file it with the clerk of the superior court in the county in which the appeal is pending.

C. By order of the court or by stipulation of the parties to the action, the record may be shortened or supplemented.

D. If the appeal is from an action instituted by the registrar and the court determines that the appellant is the successful party in the appeal, the appealing party is entitled to recover from the registrar any monies paid by the appealing party for transcriptions or for copies of documents provided by the registrar.

### **§32-1158. Minimum elements of a contract**

A. From and after December 31, 1992 **until December 31, 2007**, any contract in an amount of more than one thousand dollars and less than one hundred fifty thousand dollars entered into between a contractor and the owner of a property to be improved shall contain in writing at least the following information:

1. The name of the contractor and the contractor's business address and license number.
2. The name and mailing address of the owner and the jobsite address or legal description.
3. The date the parties entered into the contract.
4. The estimated date of completion of all work to be performed under the contract.
5. A description of the work to be performed under the contract.
6. The total dollar amount to be paid to the contractor by the owner for all work to be performed under the contract, including all applicable taxes.
7. The dollar amount of any advance deposit paid or scheduled to be paid to the contractor by the owner.
8. The dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction under the contract.

B. From and after December 31, 2007, any contract in an amount of more than one thousand dollars entered into between a contractor and the owner of a property to be improved shall contain in writing at least the following information:

1. The name of the contractor and the contractor's business address and license number.
2. The name and mailing address of the owner and the jobsite address or legal description.
3. The date the parties entered into the contract.
4. The estimated date of completion of all work to be performed under the contract.
5. A description of the work to be performed under the contract.
6. The total dollar amount to be paid to the contractor by the owner for all work to be performed under the contract, including all applicable taxes.
7. The dollar amount of any advance deposit paid or scheduled to be paid to the contractor by the owner.
8. The dollar amount of any progress payment and the stage of construction at which the contractor will be entitled to collect progress payments during the course of construction under the contract.

9. That the property owner has the right to file a written complaint with the registrar for an alleged violation of section 32-1154, subsection A. The contract shall contain the registrar's telephone number and website address and shall state that complaints must be made within the applicable time period as set forth in section 32-1155, subsection A. The information in this



paragraph must be prominently displayed in the contract in ten point bold type, and the contract shall be signed by the property owner and the contractor or the contractor's designated representative. This paragraph does not apply to a person who is subject to and complies with section 12-1365.

C. At the time of signing a contract the owner shall be provided a legible copy of all documents signed and a written and signed receipt for and in the true amount of any cash paid to the contractor by the owner.

D. The requirements of this section shall not constitute prerequisites to the formation or enforcement of a contract. Failure to comply with the requirements of this section shall not constitute a defense by either party to an action for compensation, damages, breach, enforcement or other cause of action based on the contract.

### **§32-1158.01. Swimming pool; spa; construction contracts**

A. In addition to the requirements of section 32-1158, a licensed contractor who enters into a contract for the construction or installation of a residential in-ground swimming pool or spa with a purchaser who resides in the residence or who intends to reside in the residence after the completion of the contract shall include at least the following provisions:

1. A provision providing the purchaser the opportunity to request standard contractor's payment and performance bonds in a form approved by the registrar, securing the completion of the work and payment for services and materials. The cost of the payment and performance bond shall be paid by the purchaser of the swimming pool or spa and the contractor shall not charge a surcharge or a service charge.

2. The following payment provisions:

(a) A down payment payable on the execution of the contract of not more than one thousand dollars.

(b) After the completion of the excavation work on the swimming pool or spa, a payment of not more than thirty per cent of the amount of the original contract price plus any written change orders approved by the purchaser.

(c) After the installation of steel, plumbing and pneumatically applied concrete materials or the installation of a prefabricated swimming pool or spa, a payment of not more than thirty per cent of the amount of the original contract price plus any written change orders approved by the purchaser.

(d) After the installation of decking materials, a payment of not more than thirty per cent of the amount of the original contract price plus any written change orders approved by the purchaser.

(e) Before the application of the finishing interior materials or completion of all work on a prefabricated pool or spa, payment of all remaining sums due on the original contract plus any written change orders approved by the purchaser.

3. A provision that gives notice to the purchaser, in a form approved by the registrar that is in at least ten point type, of the purchaser's right to receive written material that advises the purchaser of the provisions of this section and of the procedures provided for by the registrar for the resolution of claims and disputes with licensed contractors.

4. A provision in a form approved by the registrar that is in at least ten point type, advising the purchaser of the purchaser's rights under title 44, chapter 15.

B. If a purchaser requires the contractor to furnish a payment and performance bond securing the performance of the contract, the provisions of subsection A, paragraph 2 of this section may be changed in any manner agreed to by the parties to the contract.

C. Any changes, additions or deletions to the work specified in the original contract shall be included in a written change order.

D. A contractor's failure to comply with this section is a violation of section 32-1154, subsection A.

**§12-1365. Notification; right to file a complaint with the registrar of contractors**

A. A written contract for the sale of a newly constructed dwelling between a buyer of a newly constructed dwelling and the seller responsible for the original construction of the dwelling shall contain, or provide separate notice of, the following provision:

Under Arizona Revised Statutes section 32-1155, a buyer of a dwelling has the right to file a written complaint against the homebuilder with the Arizona registrar of contractors within two years of the commission of an act in violation of Arizona Revised Statutes section 32-1154, subsection A.

B. The notice required in subsection A of this section shall be prominently displayed and appear in at least ten point bold type.

C. The buyer of the dwelling is not deemed to have received the notice required pursuant to subsection A of this section, unless the buyer initials the notice provision.

**§12-1366. Applicability; claims and actions**

A. This article does not apply:

1. If a contract for the sale of a dwelling or an association's community documents contain commercially reasonable alternative dispute resolution procedures. If the contract for the sale of a dwelling contains the procedures, the procedures shall conspicuously appear in the contract in bold and capital letters. If the contract for sale of a dwelling contains the procedures, a disclosure statement in at least twelve point font, bold and capital letters shall appear on the face of the contract and shall describe the location of the alternative dispute resolution procedures within the contract.

2. To personal injury claims.

3. To death claims.

4. To claims for damage to property other than a dwelling.

5. To common law fraud claims.

6. To proceedings brought pursuant to title 32, chapter 10.

7. To claims solely seeking recovery of monies expended for repairs to alleged defects that have been repaired by the purchaser.

B. A dwelling action brought by an association is also subject to title 33, chapter 18.

**§32-1159. Indemnity agreements in construction and architect-engineer contracts void; definitions**

A. A covenant, clause or understanding in, collateral to or affecting a construction contract or architect-engineer professional service contract that purports to indemnify, to hold harmless or to defend the promisee from or against liability for loss or damage resulting from the sole negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

B. Notwithstanding subsection A, a contractor who is responsible for the performance of a construction contract may fully indemnify a person for whose account the construction contract is not being performed and who, as an accommodation, enters into an agreement with the contractor

that permits the contractor to enter on or adjacent to its property to perform the construction contract for others.

C. This section applies to all contracts entered into between private parties. This section does not apply to:

1. Agreements to which this state or a political subdivision of this state is a party, including intergovernmental agreements and agreements governed by sections 34-226 and 41-2586.

2. Agreements entered into by agricultural improvement districts under title 48, chapter 17.

D. In this section:

1. "Architect-engineer professional service contract" means a written or oral agreement relating to the design, design-build, construction administration, study, evaluation or other professional services furnished in connection with any actual or proposed construction, alteration, repair, maintenance, moving, demolition or excavation of any structure, street or roadway, appurtenance or other development or improvement to land.

2. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving, demolition or excavation or other development or improvement to land.

### **§32-1160. Claim for termite damages; notice and offer of settlement; applicability; definition**

A. At least thirty days before filing suit against a contractor for money damages resulting from termites, a claimant shall give written notice to that contractor at that contractor's last known address, specifying in reasonable detail the facts that are the subject of the complaint. Within ten days after the date the contractor receives the notice, the contractor may request an opportunity to inspect the premises and may make a written offer to the claimant that may include an agreement by the contractor to inspect, treat, repair or have repaired at the contractor's expense any area damaged by the termites and shall describe in reasonable detail the kind of repairs or treatment offered. If accepted, the repairs or treatment shall be made within forty-five days after the date the contractor receives written notice of acceptance of the offer of compromise, unless completion is delayed by the claimant or by other events beyond the control of the contractor. Failure to provide a written notice or refusal to allow a contractor to inspect the premises for termite damage and provide a retreatment program shall create a rebuttable presumption that the damages could have been mitigated.

B. The notice prescribed by subsection A is not required if the claimant must file suit at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim.

C. This section does not create an implied warranty or extend any limitation period. This section applies only to a claim for money damages to a residence or an appurtenance to a residence resulting from termites and for which suit is filed after the effective date of this section.

D. For purposes of this section "contractor" means a person or entity, including any subsidiaries, parents, partners or affiliates, that contracts with a claimant for the construction or sale of a new residence constructed by that person or entity, or for an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition or repair of an appurtenance to a new or existing residence.

### **§32-1161. Rights of contractor after suspension of license**

A. After suspension of the license upon any of the grounds set forth in section 32-1154, the registrar shall renew it upon proof of compliance by the contractor with provisions of the judgment relating to renewal of the license, or in the absence of a judgment or provisions therein as to renewal, upon proper showing that all loss caused by the act or omission for which the license was suspended has been fully satisfied.

B. After suspension of the license pursuant to the provisions of section 32-1154 the licensee may perform, without compensation, warranty work or other corrective work.

C. After revocation of a license upon any of the grounds set forth in section 32-1154, the license shall not be renewed or reissued for one year after final determination of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied.

### **§32-1163. Effect of chapter upon federal aid contracts**

If any provision or condition contained in this chapter conflicts with any provision of federal law, or a rule or regulation made under federal law pertaining to federal aid contracts, such provision in conflict with the federal law, rule or regulation shall not apply on federal aid contracts to the extent such conflict exists, but all provisions of this chapter with which there is no such conflict, shall apply to federal aid contracts.

### **§32-1164. Violation; classification; probation; conditions**

A. Commission by a contractor of any of the following acts is a class 1 misdemeanor:

1. Any act specified in section 32-1154, subsection A, paragraph 7 or 10.
2. Acting in the capacity of a contractor within the meaning of this chapter without a license.

B. For the first offense under subsection A of this section, a contractor shall be fined not less than one thousand dollars. For the second or any subsequent offense under subsection A of this section, a contractor shall be fined not less than two thousand dollars.

C. If a person is convicted of a violation of subsection A of this section and the court sentences the person to a term of probation, the court shall order that as conditions of probation the person does all of the following:

1. Pays in full all transaction privilege tax or use tax amounts that are due under title 42, chapter 5, article 2 or 4 and that arise from the acts or omissions constituting the violation.
2. Pays in full all transaction privilege or use tax amounts that are due to the county in which the violation occurred and that arise from the acts or omissions constituting the violation.
3. Pays in full all transaction privilege or use tax amounts that are owed to the local municipal government, city or town in which the violation occurred and that arise from the acts or omissions constituting the violation.

### **§32-1165. Advertising; effect of; classification**

Except as authorized by section 32-1121, subsection A, paragraph 14, subdivision (c), it is a class 1 misdemeanor for any person to advertise that he is able to perform any service or contract for compensation subject to regulation by the registrar under the terms of this chapter unless a license under the terms of this chapter is first obtained regardless of whether his operations as a contractor are otherwise exempt.

### **§32-1166. Injunctive relief; civil penalty**

A. In addition to all other remedies, when it appears to the registrar, either upon complaint or otherwise, that any person, firm, partnership, corporation, association or other organization, or a combination of any of them, has engaged in or is engaging in any act of contracting, practice or transaction which constitutes a violation of this chapter, or any rule or order of the registrar, the registrar may serve upon such person, firm, partnership, corporation, association or other organization not currently licensed under this chapter, by certified mail or by personal service, a cease and desist order requiring the person, firm, partnership, corporation, association or other organization to cease and desist immediately, upon receipt of the notice, from engaging in such act, practice or transaction. In conjunction with the cease and desist order, the registrar may issue a citation for a violation. Each citation shall be in writing and shall clearly describe the violation for which the citation was issued. Each citation shall contain an order to cease and desist and an assessment of a civil penalty in an amount of at least two hundred dollars for each violation but not more than two thousand five hundred dollars for the multiple violations committed on the same day. If after the issuance of a citation by the registrar, the person or organization receiving the citation fails to cease and desist in the violation or violations described in the citation, the registrar may assess an additional civil penalty of up to two thousand five hundred dollars for each day the violation or violations continue. The registrar shall adopt rules covering the assessment of a civil penalty that give due consideration to the gravity of the violation and any history of previous violations. The penalties authorized under this section are separate from, and in addition to, all other remedies either civil or criminal.

B. Each violation of this chapter or a rule or order of the registrar by a person who is required to be licensed by this chapter and who does not possess the required license shall constitute a separate offense, and the registrar may impose a civil penalty of not to exceed two thousand five hundred dollars for each violation except that for multiple violations committed on the same day the civil penalty shall not exceed two thousand five hundred dollars for all such violations. Monies collected from civil penalties shall be deposited in the state general fund.

C. The registrar of contractors may issue citations containing orders to cease and desist and of civil penalties against persons who have never been licensed under this chapter who are acting in the capacity of or engaging in the business of a contractor in this state.

#### **§32-1166.01. Service of citation**

A citation issued under section 32-1166 may be served personally or by certified mail at the last known business address or residence address of the person cited.

#### **§32-1166.02. Time for issuance of citation**

A citation under section 32-1166 shall be issued by the registrar within ninety days after actual discovery of the offense by this state or the political subdivision having jurisdiction.

#### **§32-1166.06. Filing registrar's orders**

After the exhaustion of administrative review procedures pursuant to title 41, chapter 6, article 10, and if judicial review has not been sought under title 12, chapter 7, article 6, a certified copy of any registrar's order requiring the payment of civil penalties may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall handle the registrar's order in the same manner as a superior court judgment. A registrar's order that is filed in the office of the clerk of the

superior court has the same effect as a superior court judgment and may be recorded, enforced or satisfied in a similar manner. A person who files a registrar's order under this section is not required to pay a filing fee.

#### **§32-1166.07. Waiver of civil penalty**

Notwithstanding any other law, the registrar may waive all, except two hundred dollars, of the civil penalty if the person against whom the civil penalty is assessed completes all of the requirements for, and is issued, a contractor's license. Any loss or damage to the public caused by the violator's activities shall be remedied before issuance of the license.

#### **§32-1167. Qualifying party's disassociation with licensee; licensee's requalification; penalty**

A. If a person who qualified for a license ceases for any reason whatsoever to be connected with the licensee, both the licensee and the qualifying party shall notify the registrar in writing within fifteen days after such disassociation.

B. A licensee shall have sixty days from the date of any such disassociation to qualify through another person. If the licensee fails to qualify through another person within sixty days, the license is automatically suspended by operation of law at the end of the period until the licensee does qualify through another person.

#### **§32-1168. Proof of valid license**

At the request of the registrar, and after the issuance of a citation pursuant to section 32-1104, subsection A, paragraph 4, or a cease and desist order pursuant to section 32-1166, subsection A, the county, city or authority of the state may cause work on a construction project to cease or be suspended on that project until there is compliance with the licensing requirements of section 32-1151 by those contractors employed on that project.

#### **§32-1169. Local proof of valid license; violation; penalty**

A. Each county, city or other political subdivision or authority of this state or any agency, department, board or commission of this state which requires the issuance of a building permit as a condition precedent to the construction, alteration, improvement, demolition or repair of a building, structure or other improvement to real property for which a license is required under this chapter, as part of the application procedures which it utilizes, shall require that each applicant for a building permit file a signed statement that the applicant is currently licensed under the provisions of this chapter with the applicant's license number and the applicant's privilege license number required pursuant to section 42-5005. If the applicant purports to be exempt from the licensing requirements of this chapter, the statement shall contain the basis of the asserted exemption and the name and license number of any general, mechanical, electrical or plumbing contractor who will be employed on the work. The local issuing authority may require from the applicant a statement signed by the registrar to verify any purported exemption.

B. The filing of an application containing false or incorrect information concerning an applicant's contractor's license or transaction privilege license with the intent to avoid the licensing requirements of this chapter is unsworn falsification pursuant to section 13-2704.

## **ARTICLE 4. QUALIFICATION OF SOLAR CONTRACTORS**

### **§32-1170. Definitions**

In this article, unless the context otherwise requires:

1. "Solar contractor" means a contractor, as defined in section 32-1101, who installs, alters or repairs solar devices.
2. "Solar device" means a device for the use and application of solar energy incidental to:
  - (a) Boilers, steamfitting and process piping.
  - (b) Plumbing.
  - (c) Air conditioning or comfort heating and cooling systems.
  - (d) Hot water systems for residences and swimming pools.
  - (e) Solar daylighting by a device as defined in section 44-1761.

### **§32-1170.01. Installation, alteration or repair of solar device without qualification as solar contractor prohibited**

After June 30, 1980, it is unlawful for a contractor to install, alter or repair a solar device without qualifying as a solar contractor pursuant to this article.

### **§32-1170.02. Qualification examination**

- A. To qualify as a solar contractor under this article, the applicant shall:
  1. Submit to the registrar an application on forms prescribed by the registrar, identifying the applicant and the classification of license held or sought by the applicant, and pay the prescribed fee.
  2. Pass an examination approved and conducted by the registrar that is specific to the solar requirements of the classification of license held or sought by the applicant.
  3. Meet all other provisions of this chapter relating to obtaining and retaining an appropriate license.
- B. The examination shall be given by the registrar at the times and places prescribed by the registrar.
- C. The license of a successful applicant shall be appropriately marked or supplemented by the registrar to indicate qualification as a solar contractor within the scope of that license.

### **§44-1762. Solar energy device warranties; installation standards; inspections**

- A. The collectors, heat exchangers and storage units of a solar energy device that is sold or installed in this state, and the installation, shall be warranted for a period of at least two years. The remaining components of the solar energy device and their installation shall be warranted for a period of at least one year.
- B. Any person who manufactures, furnishes for installation or installs a solar energy device shall provide with such device a written statement of warranty, responsibilities assumed or disclaimed and performance data of the solar energy device and components of the solar energy device. The form of the statement required by this subsection is subject to approval by the registrar of contractors after consultation with the department of commerce. The registrar of contractors shall adopt rules governing the readability and understandability of the statement. The statement shall specify the source of any performance data it contains. A copy of the statement shall be delivered to the registrar of contractors where it shall be kept on public file.

C. A person who sells a solar energy device in this state shall furnish a certificate to the buyer that the solar energy device complies with the requirements of this section.

D. A solar energy device that is sold or installed in this state shall comply with any consumer protection, rating, certification, performance, marking, installation and safety standards that have been adopted by the department of commerce.

E. An individual who installs a solar energy device in this state, in addition to being a licensed solar contractor under title 32, chapter 10, article 4, shall:

1. Possess the general license that is appropriate to the type of solar energy device that is installed. Installers of a solar water heater or a photovoltaic device shall possess an appropriate contractor's license.

2. Meet any education and training standards that have been adopted by the registrar of contractors after consultation with the department of commerce.

3. Pass an examination on the installation of the type of device to be installed, if the registrar of contractors after consultation with the department of commerce has adopted such an examination.

F. Solar energy devices that are designed or installed by the final owner are exempt from the requirements of subsections A through E.

G. The installation of a solar energy device shall meet the requirements of:

1. All applicable fire, safety and building codes.

2. Consumer protection standards, including freeze protection and temperature related damage standards adopted by the department of commerce.

3. All other applicable federal, state and local laws.

H. Solar energy devices are subject to random inspections by the registrar of contractors. Installers who fail to meet safety, installation or other prescribed standards are subject to disciplinary action under title 32, chapter 10, article 3.

## **ARTICLE 5. GENERAL REMODELING AND REPAIR CONTRACTORS**

### **§32-1171. Workers' compensation violation; license suspension; complaints; summary suspension**

**A. Notwithstanding any other law, if the registrar finds that a general remodeling and repair contractor as prescribed by rule adopted by the registrar fails to secure workers' compensation pursuant to title 23, chapter 6, article 4, the registrar shall order a summary suspension of the contractor's license pending proceedings for revocation or other action. The registrar shall serve the licensee with a written notice of complaint and formal hearing, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the registrar pursuant to title 41, chapter 6, article 10.**

**B. A general remodeling and repair contractor as prescribed by rule adopted by the registrar who is the subject of at least five unresolved and substantiated abandonment complaints as determined by the registrar in a twelve month period shall not accept new projects until the number of unresolved and substantiated abandonment complaints relating to the contractor's work performance is below five in a twelve month period.**

**C. Notwithstanding section 32-1154, if the registrar finds, based on its investigation, that the public health and safety requires immediate action, the registrar shall order a summary suspension of a general remodeling and repair contractor license as prescribed by rule adopted by the registrar pending proceedings for revocation or other action. The registrar**



shall serve the licensee with a written notice of complaint and formal hearing, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the registrar pursuant to title 41, chapter 6, article 10.

**§32-4301. License, certificate or registration expiration; military active duty; one hundred eighty day extension**

A. Except as otherwise provided in this section, a license, certificate or registration issued pursuant to this title to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member. A license, certificate or registration issued pursuant to this title to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the license, certificate or registration issuing authority of the federal active duty status of the member.

B. A license, certificate or registration issued pursuant to this title to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license, certificate or registration if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

C. If the license, certificate or registration is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license, certificate or registration and shall not be charged any additional costs such as late fees or delinquency fees.

D. The member, or the legal representative of the member, shall present to the authority issuing the license, certificate or registration a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

E. This section does not apply to licenses issued pursuant to chapter 10 of this title if a person other than the person who is a member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces as described in subsection A is authorized to renew the license.

F. A license or certificate issued pursuant to chapter 36 of this title to any member of the Arizona National Guard, the United States armed forces reserves or the regular component of the United States armed forces shall be placed in active status for ninety days after the member returns from federal active duty status of the member.

## **§41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions**

**A. After September 30, 2008, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not present any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:**

- 1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.**
- 2. A driver license issued by a state that verifies lawful presence in the United States.**
- 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.**
- 4. A United States certificate of birth abroad.**
- 5. A United States passport.**
- 6. A foreign passport with a United States visa and work permit.**
- 7. An I-94 form with a photograph.**
- 8. A United States citizenship and immigration services employment authorization document or refugee travel document.**
- 9. A United States certificate of naturalization.**
- 10. A United States certificate of citizenship.**
- 11. A tribal certificate of Indian blood.**
- 12. A tribal or bureau of Indian affairs affidavit of birth.**

**B. This section does not apply to an individual, if all of the following apply:**

- 1. The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.**
- 2. The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.**

**C. For the purposes of this section:**

- 1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state.**
- 2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.**

## **Laws 1992, Ch. 165, Sec. 14 Proof of license exemption**

Notwithstanding section 32-1153, A.R.S., a contractor that was issued a commercial class A general engineering contractor's license before October 31, 1991 and whose qualifying party had a class A general engineering license on or after January 1, 1981 that was changed before 1985 to a residential B-04 general engineering contractor's license may maintain an action in any court of this state for collection of compensation for construction services performed for which a class A general engineering license is required without proof of being duly licensed when the contract sued on was entered into and when the cause of action arose. This exemption is retroactive to January 1, 1989 and applies to all actions now pending or brought on or before January 1, 1994.

#### **§41-3014.08. Registrar of contractors agency; termination July 1, 2014**

- A. The registrar of contractors agency terminates on July 1, 2014.
- B. Title 32, chapter 10 is repealed on January 1, 2015.

#### **§42-2003. Authorized disclosure of confidential information**

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest which will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation which may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

- (b) A state tax official of another state.
  - (c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.
  - (d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.
  - (e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.
6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.
7. Any person to the extent necessary for effective tax administration in connection with:
- (a) The processing, storage, transmission, destruction and reproduction of the information.
  - (b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.
8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:
- (a) Regarding income tax, withholding tax or estate tax.
  - (b) On any tax issue relating to information associated with the reporting of income tax, withholding tax or estate tax.
9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.
10. The financial management service of the United States treasury department for use in the treasury offset program.
11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.
12. The department of commerce for its use in:
- (a) Qualifying motion picture production companies for the tax incentives provided for motion picture production under chapter 5 of this title and sections 43-1075 and 43-1163.
  - (b) Fulfilling its annual reporting responsibility pursuant to section 41-1517, subsection T.
  - (c) Qualifying applicants for the motion picture infrastructure project tax credits under sections 43-1075.01 and 43-1163.01.
13. A prosecutor for purposes of section 32-1164, subsection C.
- C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:
- 1. One or more of the following circumstances must apply:
    - (a) The taxpayer is a party to the proceeding.
    - (b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.
    - (c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.
    - (d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, upon the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a distributor's license and number or a withholding license and number or disclose the information to be posted on the department's web site or otherwise publicly accessible pursuant to section 42-1124, subsection F and section 42-3201, subsection A.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization upon which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy tax may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. In order to comply with the requirements of section 42-5029, subsection A, paragraph 3, the department may disclose to the state treasurer statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 2, subdivision (a), item (iii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(1)(6) of the internal revenue code.

R. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

T. The department shall release confidential information as requested by the attorney general for purposes of determining compliance with and enforcing section 44-7101, the master settlement agreement referred to therein and subsequent agreements to which the state is a party that amend or implement the master settlement agreement. Information disclosed under this subsection is limited to luxury tax information relating to tobacco manufacturers, distributors, wholesalers and retailers and information collected by the department pursuant to section 44-7101(2)(j).

U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer or electronic return preparer pursuant to section 42-1103.02 or 42-1125.01, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

V. The department may disclose to the attorney general confidential information received under section 44-7111 and requested by the attorney general for purposes of determining compliance with

and enforcing section 44-7111. The department and attorney general shall share with each other the information received under section 44-7111, and may share the information with other federal, state or local agencies only for the purposes of enforcement of section 44-7101, section 44-7111 or corresponding laws of other states.

## **NOTES**